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OCA FILE

media

5 August 1988  
OCA 2627-88

MEMORANDUM FOR: Director of Central Intelligence  
THROUGH: General Counsel *AB*  
FROM:   
Acting Director of Congressional Affairs  
SUBJECT: Leaks Legislation

1. The House Intelligence Committee has requested the Agency's position on whether it would be wise to enact legislation that would criminalize unauthorized disclosure of information outside the context of the espionage statutes. Such legislation would punish those who leak classified information, but it would not apply to journalists who publish the information.

2. Former Director Casey pushed strongly for such legislation in the belief that criminal sanctions would deter federal employees from leaking classified information. The Justice Department strongly resisted such legislation for two reasons. First, attempting to enact such legislation could undercut the government's position in the Morison case that the espionage laws do apply to the unauthorized disclosure of classified information to the news media. (The defendant in that case has filed a petition for certiorari with the Supreme Court to overturn the decision of the 4th Circuit Court upholding his conviction.) Second, enacting leaks legislation would not actually deter the amount of unauthorized disclosures because the probability of detection of the leaker remains extremely low. Should a leaker actually be identified, the Department of Justice has argued that administrative sanctions could be taken to punish the individual employee.

3. Other factors also have made it difficult to enact leaks legislation. The White House staff in previous years opposed pushing for leaks legislation because the negative publicity that would accrue to the President from such an

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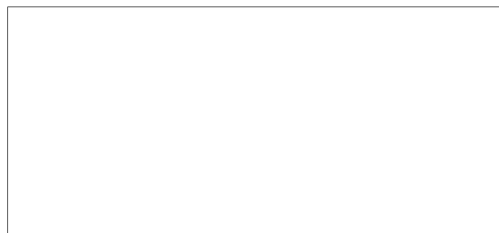
effort. Some Members of Congress have also been wary of leaks legislation because the media would portray it as an assault on the First Amendment and the possibility that such legislation could deter whistleblowers or Congressional critics of the Administration's program.

4. Those arguing for leaks legislation believe its enactment would send a signal that the Government is serious about unauthorized disclosure of classified information to the media and that this signal would have a salutary effect on those considering leaking classified information. In addition, in situations when the Government is prosecuting a federal employee for leaking classified information, it could be easier to obtain a conviction for violation of a law criminalizing unauthorized disclosure as opposed to obtaining a conviction under the espionage statutes.

5. There is currently some action underway in Congress on leaks legislation. Republican members in the House (Hyde and Livingston) have been pushing an amendment to the Intelligence Oversight Legislation that would criminalize unauthorized disclosure of classified intelligence information by Members or Congressional staff. The amendment failed on a tie vote in the House Intelligence Committee. It is unlikely that the Republicans will have an opportunity to offer the amendment on the House floor because it has been ruled non-germane to the Intelligence Oversight bill.

6. I suggest that upon your return from vacation, you meet with Russ Bruemmer, Bill Baker, Dick Stolz and me to discuss what position the Agency should take with respect to endorsing legislative proposals that would criminalize the unauthorized disclosure of classified information.

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